

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
)
v.) Cause No. 4:18-cv-207-SEB-DML
)
)
1855.6 POUNDS OF AMERICAN)
PADDLEFISH MEAT)
(ASSET IDENTIFICATION)
NUMBER: 17-FWS-000019) and
982.34 POUNDS OF)
AMERICAN PADDLEFISH CAVIAR)
(ASSET IDENTIFICATION)
NUMBER: 17-FWS-000017))
)
Defendant.)

**MOTION FOR ORDER ALLOWING INTERLOCUTORY
SALE OF PROPERTY AND SUBSTITUTION OF RES**

Plaintiff United States of America, by counsel, Josh J. Minkler, United States Attorney for the Southern District of Indiana, and Nicholas Linder, Assistant United States Attorney, respectfully moves for an Order Allowing Interlocutory Sale of Property and Substitution of Res, pursuant to 18 U.S.C. § 983(j) and Supplemental Rule G(7) of the Federal Rules of Civil Procedure, in the above cause of action, and in support thereof presents to the Court the following facts:

1. On May 10, 2017, U.S. Fish and Wildlife Service (USFWS) agents executed a Search and Seizure Warrant at Ohio Valley Caviar LLC and seized 1855.6 Pounds of American Paddlefish Meat (Asset Identification Number 17-FWS-000019) and 982.34 Pounds of American Paddlefish Caviar (Asset Identification Number 17-FWS-000017) in connection with an alleged violation of the Lacey Act, 16 U.S.C. §§ 3372(a)(2)(A); 3373(d)(1).

2. On November 13, 2018, the United States of America filed a Complaint of Forfeiture In Rem against the above-mentioned property.

3. The American Paddlefish meat and caviar is subject to forfeiture to the United States pursuant to the Lacey Act, 16 U.S.C. § 3374(a), as it constitutes fish that has been imported, exported, transported, sold, received, acquired, or purchased in violation of any law, treaty, or regulation of the United States.

4. The American Paddlefish meat is currently estimated to be worth \$2 a pound, and the American Paddlefish caviar to be worth between \$100 and \$150 a pound, depending on market conditions, which fluctuate regularly.

5. Per 18 U.S.C. § 983(j), the court may take “action to seize, secure, maintain, or preserve the availability of property subject to civil forfeiture” prior to the filing of a civil complaint, “after notice to persons appearing to have an interest in the property and opportunity for a hearing” if there is (i) “a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being . . . made unavailable for forfeiture; and (ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

6. Supplemental Rule G(7)(b)(i)(A) of the Federal Rules of Civil Procedure states that “on motion by a party or person having custody of the property, the court may order all or part of the property sold if. . .the property is perishable or at risk or deterioration, decay, or injury by being detained in custody pending the action.”

7. Courts have previously granted protective orders directing the interlocutory sale of property where failure to take action would result in economic damage to the value of the

property in question and would jeopardize the availability of any equity in the property for forfeiture to the United States. *See, e.g., United States v. 2540 Chadwick Way Mendelein, Illinois*, No. 05 C 1824, 2005 WL 2124539, at *1 (N.D. Ill. 2005) (citing 18 U.S.C. § 983(j)). In *2540 Chadwick Way*, the property in question was real property subject to foreclosure and as a result, the Court granted an interlocutory order to preserve, protect, and to ensure the property would be available for forfeiture. *Id.*; *see also United States v. Johnston*, 2013 WL 5775250 (E.D. Ky. Sept. 26, 2013) (permitting sale of horse upon finding that mare's value would decline if she was not sold during appropriate time during her reproductive cycle).

8. Here, the property in question is at greater risk of economic damage if left unsold than the property in *2540 Chadwick Way*. The American Paddlefish meat and caviar are perishable and at risk of deterioration, decay, or injury by being detained in custody pending the resolution of this action. Although the fish meat and caviar have currently been certified by the National Oceanic and Atmospheric Administration (NOAA) as suitable for human consumption, the likely date of expiration is rapidly approaching in March 2019. After this expiration date, the fish meat and caviar will likely be worthless. Further, no reasonable fishmonger would purchase fish meat and caviar close to the onset of the expiration date, so an expedited sales procedure, sooner rather than later, is necessary to preserve the value. Therefore, it is in the best interest of all parties, including any unknown claimants, that the American Paddlefish meat and caviar to be sold through an interlocutory sale.

8. If permitted, the sale of the defendant American Paddlefish meat and caviar shall be conducted by the United States Marshals Service (USMS), its agents, employees, representatives, and/or contractors through the use of a sealed bid method. At the end of the bidding period, the USMS will sell the American Paddlefish meat and caviar to the highest

bidder, provided that the highest bid is not less than the discretionary reserve price. The purchase price of the American Paddlefish meat and caviar will be at cash price. In the event that no responsive and timely bids are submitted, or in the event that the minimum reserve price is not met, the auction will be terminate and the parties will confer to determine an alternative means of conducting the interlocutory sale.

9. The net proceeds from the sale of the defendant American Paddlefish meat and caviar will include all money realized from the sale of the defendant American Paddlefish meat and caviar less the costs incurred by the United States Marshals Service in connection with the maintenance, storage, sorting, appraisal, marketing, and sale of the defendant American Paddlefish meat and caviar.

10. The net proceeds will constitute a “substitute *res*” for the defendant American Paddlefish meat and caviar in this civil action, and the Court shall retain jurisdiction over the net proceeds until the conclusion of the forfeiture proceeding. The interlocutory sale of the property and the substitution of the net proceeds for the defendant American Paddlefish meat and caviar shall not affect any of the parties’ right to litigate this action. Simply, the net proceeds shall be substituted for the property in any forfeiture order.

11. The net proceeds shall be converted into a cashier’s check and remitted by the United States Marshals Service to the Seized Asset Deposit Fund (SADF) and held pending further order of the Court.

12. On remittance of the net proceeds, the United States shall advise the Court and of the amount of the substitute *res*.

13. The United States’ participation in this Order for Interlocutory Sale or Property and Substitution of Res does not waive or interfere with the right of the United States to contest

all claims herein, including the standing and the alleged ownership interests of any claimants to the *res* and substitute *res*. This Order for Interlocutory Sale of Property and Substitution of Res does not waive or interfere with any claimant's right to contest the seizure and forfeiture of his interest in the defendant American Paddlefish meat and caviar or the substitute *res*, including, but not limited to recovering any costs incurred by the United States Marshals Service in connection with the maintenance, storage, sorting, appraisal, marketing, and sale of the defendant American Paddlefish meat and caviar that are deducted from the net proceeds of the sale as set forth in Paragraph 7 above.

14. On October 11, 2018, counsel for the United States sent an email communication to the working email address for counsel for Mr. Schigur in regard to the matter described herein. Counsel for Mr. Schigur has not replied as of the date of this email.

WHEREFORE, the United States respectfully request that this Court enter an Order Allowing Interlocutory Sale of Property and Substitution of Res, providing for the sale of the specified American Paddlefish meat and caviar by the United States Marshals Services according to the procedures outlined above.

Respectfully Submitted

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CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2018, a copy of the foregoing Motion for Order Allowing Interlocutory Sale of Defendant Property and Substitution of Res was filed electronically. Service of this filing will be made on all ECF-registered counsel by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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